

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

Tr.P(Crl.).No. 89 of 2006()

ST.3546/2005 of J.M.F.C.,VADAKARA

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PETITIONER:

A.NALINI, W/O.N.VISWANATHAN,
D/O.A.CHELLAMMA, AKKUPPALLY HOUSE,
SHEKHARIPURAM, PALAKKAD, NOW RESIDING AT
ROOM NO.13/100, PO KAVUMTHARA,
SHEKHARIPURAM, PALAKKAD- 678 012.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
ERNAKULAM.
2. R.RAJENDRAN @ RAJENDRAN PILLAI,
RAYARANHOTH HOUSE, MARKET ROAD, VADAKARA,
KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 02/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Tr.P(Crl.)No.89 of 2006

Dated this the 2nd day of April, 2007

ORDER

The petitioner is an accused in a prosecution under Section 138 of the N.I Act. Cognizance has been taken by the learned Magistrate. The petitioner had not appeared before the learned Magistrate, but subsequently a warrant of arrest was issued to procure the presence of the petitioner. The petitioner wants to surrender before the learned Magistrate. The petitioner is a woman, aged about 53 years. She apprehends that her application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, prayed that appropriate directions may be issued under Section 482 Cr.P.C. Though the petition is for transfer, this is the short request made before me.

3. I find absolutely no reason to invoke the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice**

George v. The Deputy Superintendent of Police [2003(1) KLT 339].

4. The learned counsel for the petitioner submits if insistence were made on the personal appearance of the petitioner on all dates of posting, it will work out great prejudice and undeserved hardship to the petitioner. I have no reason to assume that the learned Magistrate would insist on such personal appearance unnecessarily. The prosecution is under Section 138 of the N.I Act and in the absence of any special and compelling reasons, an application for exemption must be considered favourably by the learned Magistrate. I find no reason to direct transfer as prayed.

5. This Transfer Petition is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. Her applications for exemption must also be considered and disposed of by the learned Magistrate expeditiously.

H/o.

(R.BASANT, JUDGE)

rtr/-